

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
_____)	CIVIL ACTION: 01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
ALL CLASS ACTIONS)	
_____)	

PLAINTIFFS' MEMORANDUM REGARDING SCHEDULING

At the conclusion of the hearing on plaintiffs' motion for class certification the parties jointly raised the issue of the need to readdress various dates in Case Management Order ("CMO") No. 10. The court directed the parties to discuss scheduling and to report back to the Court. This memorandum constitutes plaintiffs' submission on scheduling.

The Fast Track defendants and plaintiffs conferred on a number of occasions in an effort to reach an agreed schedule but were unable to do so. There was agreement as to the length of time needed to complete discovery. Where the parties disagree is when expert reports are due and when summary judgment and pre-trial proceedings should take place. Plaintiffs propose a schedule that should have the Fast Track cases ready for trial by May 2006. Defendants propose no set schedule and would have all dates be triggered only after all proceedings relating to class certification are completed including any appeals to the First Circuit and any decisions by the First Circuit.

The parties agree that given the number of documents still being produced by defendants and third parties, and given the extensive focus on class certification that has somewhat sidetracked merits discovery, that additional time is needed for merits discovery beyond the January 31, 2005 fact discovery cutoff in CMO No. 10. For example, plaintiffs are still receiving basic data sets that are needed to finalize Dr. Hartman's "but for yardsticks" and depositions are needed from each defendant regarding such information. Plaintiffs are still receiving substantial numbers of documents from defendants on other subjects and expect to conduct ten to thirty depositions on the merits from each defendant in the next few months. Plaintiffs proposed and defendants did not disagree that fact discovery should cutoff in August 2005. Plaintiffs thus propose a schedule as follows:

Close of Fact Discovery for Fast Track Defendants	August 31, 2005
Plaintiffs' Expert Liability Reports	September 31, 2005
Defendants' Expert Liability Reports	November 15, 2005
Summary-Judgment Motions Due	November 15, 2005
Plaintiffs' Reply Expert Liability Reports	December 15, 2005
Plaintiffs' Opposition to Summary Judgment	January 15, 2006
Defendants' Reply on Summary Judgment	February 1, 2006
Plaintiffs' Surreply on Summary Judgment	February 15, 2006

Trial	May 15, 2006
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Plaintiffs do not believe that the case should be stayed or activity stopped while any party petitions the First Circuit for review of the Court's order on class certification. The standards under which the First Circuit accepts review of a decision on class certification under Fed R. Civ. P. 23 (f) are narrow and such review is the exception and not the rule. If the First Circuit grants such a request, the parties can then address scheduling modifications with the Court at that time. However to simply await a final ruling by the First Circuit before scheduling any other litigation deadlines will result in a vastly protracted schedule. For example under defendants' proposal, if the Court ruled on class certification in July and defendants sought appellate review, fact discovery would not close until five months after the First Circuit declined review, which would push the close of discovery out into 2006, with the summary-judgment motions not being filed until mid 2006. This stretched out schedule is simply to long and should be rejected.

Plaintiffs believe all dates for the non Fast Track defendants should be vacated, that document discovery with respect to such defendants should continue and further dates be the subject of a case management briefing after the Court's ruling on class certification.

DATED: February 25, 2005.

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